HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No. 19653 of 2007

Between:

G. Sriram & others

… Petitioners

And

The Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Panchayat Raj & Rural Development,
Hyderabad & others

… Respondents

:: O R D E R ::

Counsel for the petitioners : Shri S. Satyam Reddy

September 18, 2007

Per G.S. SINGHVI, CJ

This petition filed by Shri G. Sriram and two others with the prayer for quashing order dated 01.11.2006 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (for short, 'the Tribunal') in VMA No.1172 of 2006 and V.M.A.No.1226 of 2006 in O.A.No.5109 of 2006 is illustrative of the legal journey performed by the employees of the State of Andhra Pradesh who first invoke the jurisdiction of the Tribunal for redressal of their grievance in relation to service matters as defined in Section 3(q) of the Administrative Tribunals Act, 1985 (for short, 'the Act'), apply for interim relief and file writ petition if the Tribunal declines their prayer for stay or vacate the ex parte interim order, as has been done in the present case.

In the Original Application filed by them, the petitioners have questioned the retrospective regularisation of the services of the private respondents in the cadre of Assistant Executive Engineer by

asserting that those who had competed with them for selection through the agency of the Andhra Pradesh Public Service Commission (for short, 'the Commission') and were not selected, but were allowed to continue on purely temporary and ad hoc basis, cannot be given the benefit of regularisation of service with retrospective effect. According to the petitioners, G.O.Ms.No.262, Panchayat Raj & Rural Development (Estt.III) Department dated 17.06.2006 issued by the State Government for retrospective regularisation of the services of the Assistant Executive Engineers, who were appointed during the period 1990 – 1992 is contrary to the provisions contained in Andhra Pradesh Act No.2 of 1994 and Andhra Pradesh State and Subordinate Service Rules, 1962 and is grossly violative of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution.

It is borne out from the record that while admitting the Original Application, the Tribunal stayed the implementation of G.O.Ms.No.262, dated 17.6.2006, but after hearing the counsel for the parties, the Tribunal vacated the ad interim order and directed that regularisation of the appointment of the private respondents and promotion made during the pendency of the Original Application will remain subject to its outcome and shall be subject to review immediately after the decision of the application filed by the petitioners.

Shri S. Satyam Reddy, learned counsel for the petitioners made strenuous efforts to convince us that the reasons assigned by the Tribunal for vacating the ad interim order are legally unsustainable and the order impugned in the writ petition is liable to be set aside. He argued that the private respondents, who were appointed otherwise than on the recommendations of the Public Service Commission do not have any legitimacy in the cadre of Assistant Executive Engineers and even if there was some semblance of justification for the government's decision to regularise their services, the decision contained in G.O.Ms.No.262, dated 17.06.2006 is ex facie arbitrary, discriminatory and violaive of Articles 14 and 16 of the Constitution of

India. Learned counsel emphasised that the petitioners were appointed on the recommendations of the Commission and argued that they cannot be ranked junior to the private respondents, who were not selected by the Commission. Shri Reddy submitted that if the private respondents are promoted to the next higher posts, his clients will suffer irreparable injury. Learned counsel lamented that the Tribunal has not been able to take up the Original Application for final adjudication and, on that account, the rights of his clients have been jeopardized.

We have given serious thought to the arguments/submissions of the learned counsel, but have not felt persuaded to interfere with the discretion exercised by the Tribunal in the matter of grant of interim relief.

Since the Original Application filed by the petitioners is pending adjudication before the Tribunal, we do not consider it proper to express any opinion on the merits of the case set up by them. However, we do not have any doubt that the petitioners are not entitled to interim relief in terms of the prayer made. The admission of the Original Application does give an indication that the petitioners have been able to make out a prima facie case for consideration by the Tribunal in terms of Section 19(3) of the Act, but that does not entitle them to seek an interim order ex debito justitiae. It is trite to say that whenever an application for interim relief like the one prayed for by the petitioners is filed, the Tribunal is duty-bound to consider not only the existence of prima facie case, but also the elements of balance of convenience, irreparable injury and above all public interest before an interim order in the matters of appointment, promotion, seniority, confirmation etc. can be passed. If an application filed in the matter of recruitment/selection, appointment, promotion, seniority, confirmation etc. is ultimately allowed, the Tribunal can annul the process of selection or quash the appointment or promotion and direct the public employer to consider the case of the applicant. On such consideration,

the applicant may or may not be selected. Even if he is selected, the appointing authority can, for good and sufficient reasons to be recorded in writing, refuse appointment. If the seniority list impugned in the application is quashed, the Tribunal can direct re-determination/re-fixation of the seniority. The Tribunal can also direct review of the promotions made on the basis of the impugned seniority list. In such matters, interlocutory intervention by the Tribunal is not warranted. To put it differently, the Tribunal cannot stall the appointments, promotion and confirmation of other persons or restrain the competent public authority from finalising the seniority or making promotion to the next higher posts.

We can take judicial notice of the fact that an order staying the finalisation of the seniority in a particular cadre or restraining a public authority from making promotion has grave adverse impact on the administration of the organisation or the department. At times, such orders bring the entire administration to a grinding halt. Therefore, except in rarest of rare cases, the Tribunal will be extremely loath to exercise its discretion to stay the finalisation of the seniority or the recruitment process or promotions of the eligible persons. The elements of irreparable injury, balance of convenience and public interest are clearly against the interlocutory intervention of the Tribunal or the Court in such matters.

It is neither the pleaded case of the petitioners nor the learned counsel argued that the Tribunal does not have the power, jurisdiction and authority to entertain and decide the application for interim relief or vacate petition filed by the persons affected by interim orders. Therefore, we do not find any valid ground to interfere with the order under challenge.

With the above observations, the writ petition is dismissed. However, liberty is given to the petitioners to file an application and make request to the Tribunal for according out of turn hearing to their application.

As a sequel to dismissal of the writ petition, W.P.M.P.No.25340 of 2007 filed by the petitioners for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

September 18, 2007

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